

### **REMARKS**

This responds to the Office Action mailed on June 29, 2007.

No claims are amended, no claims are canceled, and no claims are added; as a result, claims 1-23 are now pending in this application.

#### **§103 Rejection of the Claims**

Claims 1-4, 6, 9-13 and 15-21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Holdrege et al. (U.S. Patent No. 6,845,087), hereafter “Holdrege”, in view of Fuerter (US Patent No. 6,125,109), hereafter “Fuerter”.

The Final Office Action contends that the features of the claims are written such that the claims read on the cited references. The Applicant respectfully disagrees and respectfully traverses this rejection.

On page 2, the Final Office Action states that the Holdrege reference discloses multiple nodes. Being that as it may, an obvious analysis under *Graham* requires more than identifying certain elements in a reference. Rather, a proper *Graham* analysis requires one to determine the scope and contents of the prior art, and ascertain the differences between the prior art and the claimed subject matter. Determining the differences between the prior art and the claimed subject matter requires some analysis as to what the prior art teaches about certain elements, not just that certain elements are disclosed by the prior art.<sup>1</sup>

It is unremarkable that Holdrege refers to communication networks that may have multiple users or nodes. However, what is remarkable and pertinent is that Holdrege does not disclose that among these multiple users and nodes, there exists a single wireless node that transmits a signal that is received by a least two infrastructure nodes.

The Final Office Action contends that a single wireless node that transmits a signal that is received by at least two infrastructure nodes is disclosed in Holdrege in the Abstract, at column 2, lines 64-67, and at column 3, lines 1-12, 30-39, and 50-59. The Applicant respectfully disagrees with this contention. The Abstract relates only to a type A node that transmits a signal

---

<sup>1</sup> See *KSR International Co. v. Teleflex Inc. et al.*, slip opinion, April 30, 2007, p. 15 (“it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.”).

during a transmit window and receives a signal during a receive window, and a type B node that adopts the opposite transmit and receive timing as the type A node. At column 3, lines 2-7, the Holdrege reference specifically states that “[t]he source node may then transmit over a first spread spectrum (e.g., CDMA) line during the source node transmit window to a destination node.” As this statement indicates, Holdrege teaches the transmission of a signal from a single transmit node to a single destination node. There is simply no mention here of a single first wireless node that transmits a signal to at least two infrastructure nodes as recited in the claims. And at column 3, lines 30-39, Holdrege mentions that hubs may support multiple links between users. However, that a hub may support multiple users via multiple links is not the same as two or more hubs receiving a signal from a first wireless node.

The Final Office Action admits that the Holdrege reference does not disclose a “module that combines at least two of the signals received at the multiple independent infrastructure nodes to estimate the signal transmitted by the single first wireless node.” The Final Office Action however contends that the Fuerter reference discloses this feature. The Applicant respectfully disagrees.

Fuerter relates to a single repeater that receives an incoming signal, and processes that incoming signal in two processing paths within that single repeater. There is no disclosure in Fuerter of a module that combines at least two signals received at multiple independent infrastructure nodes. Consequently, the Fuerter reference does not fill the gap in the Holdrege reference. Indeed, if one of skill in the art was to combine the Holdrege and Fuerter references, the result would be a communication network that includes a transmit node and a receive node that transmits and receives signals during respective transmit and receive windows, and in which at the transmit node and/or the receive node a received signal is processed in two processing paths. This is a much different teaching than the claimed subject matter.

Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Holdrege et al. (U.S. Patent No. 6,845,087), hereafter “Holdrege”, in view of Fuerter (US Patent No. 6,125,109), hereafter “Fuerter”.

Claims 7, 8, 14, 22 and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Holdrege et al. (U.S. Patent No. 6,845,087), hereafter “Holdrege”, in view of Fuerter (US

Patent No. 6,125,109), hereafter “Fuerter”, as applied to claims 6, 13 and 21 above, further in view of Smee et al. (US Patent No. 6,990,137), hereafter “Smee”.

The Applicant respectfully traverses the rejection of claims 5, 7, 8, 14, 22, and 23 for at least the reason that the claims on which these claims depend are believed to be allowable over the Holdrege and Fuerter references as illustrated in the previous paragraphs.

### **Reservation of Rights**

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant’s silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner’s personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 371-2140 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

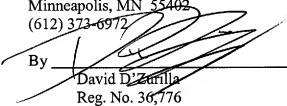
Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 373-6972

Date

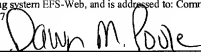
October 1, 2007

By

  
David D. Zurilla  
Reg. No. 36,776

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 1<sup>st</sup> day of October 2007.

Name



Signature

